STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX **File No. 85116-001**
Petitioner
v

Blue Cross and Blue Shield of Michigan
Respondent
_____/

Issued and entered
This 26th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 14, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq*. The Commissioner reviewed the material submitted and determined it was incomplete. Later additional information was provided and the Commissioner accepted the request on October 5, 2007.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its recommendations to the Commissioner on October 19, 2007.

II
FACTUAL BACKGROUND

The Petitioner received health care benefits from Blue Cross and Blue Shield of Michigan (BCBSM) under its Nongroup Comprehensive Health Care Benefit Certificate (the certificate).

The Petitioner had back surgery on November 14, 2006, and was hospitalized at XXXXX Hospital in Detroit until November 18, 2006. The total charge for this care was $31,824.13. BCBSM denied payment for this treatment.

The Petitioner appealed the denied claims. After a managerial-level conference on August 21, 2007, BCBSM did not change its decision and issued a final adverse determination dated August 24, 2007.

III
ISSUE

Did BCBSM properly deny coverage for the Petitioner's back surgery and related care provided from November 14, 2006, to November 18, 2006?

IV
ANALYSIS

Petitioner's Argument

The Petitioner argues that the last treatment she had for her back condition was provided by Dr. XXXXX in February or March 2006, more than six months prior to the start of her BCBSM coverage on October 1, 2006. Therefore, the Petitioner believes that her November 14, 2006, back surgery does not meet the definition of a preexisting condition.

Since she believes her back condition was not preexisting, the Petitioner argues that her surgery on November 14, 2006, is a covered benefit and BCBSM is required to pay for it.

BCBSM's Argument

It is BCBSM's position that the Petitioner's November 14, 2006, back surgery was treatment of a preexisting condition and therefore not a covered benefit under the certificate.

The certificate defines "preexisting condition" as:

> A condition for which medical advice, diagnosis, care or treatment was recommended or received within the six month period ending on the enrollment date.

The certificate states that hospital and physician services for preexisting conditions are not covered during the first 180 days of coverage. The Petitioner's effective date of coverage with BCBSM was October 1, 2006, and her back surgery was on November 14, 2006, which is within the first 180 days of the coverage.

The Petitioner indicated that she was not treated for back pain during the six months prior to the start of her coverage. However, BCBSM says that notes from her August 14, 2006, doctor's office visit indicated that the Petitioner had chronic lumbar pain, but could not seek treatment (physical therapy) because she did not have insurance. Also, notes from her October 4, 2006, office visit indicate her chief complaint was follow up on her back pain. Based on these medical records BCBSM believes that the Petitioner's condition was preexisting and her November 14, 2006, surgery is not a covered benefit.

Commissioner's Review

The Commissioner reviewed the certificate, the arguments, and documents presented by the parties and the IRO report.

The certificate (page 1.6) informs the Petitioner about when her coverage begins:

> Most benefits are available on the effective date of your contract. However, hospital and physician services for preexisting conditions are not covered during the first 180 days of your coverage, beginning on the enrollment date.

The certificate explains that the 180-day waiting period does not apply in certain circumstances but the Petitioner does not qualify for any of the exceptions (see pages 1.6 - 1.7).

The question of whether the Petitioner's back condition was preexisting was presented to an IRO for analysis and recommendation as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer in this matter is certified by the American Board of Orthopedic Surgery, is an instructor at a major university located in the eastern United States, is published in the peer reviewed literature, and is in active practice.

The IRO reviewer indicated that it is clear that the surgical care provided the Petitioner in November 2006 and the hospitalization thereafter was treatment of a preexisting condition. The effective date of the coverage was October 1, 2006, and there were notes outlining chronic lumbar pain as of August 14, 2006. The office note of October 4, 2006, clearly outlined that over the preceding four years the Petitioner had been doing physical therapy and had epidural blocks without improvement; that did not suggest a new problem. Rather the note suggests that the Petitioner "continues" to have back pain related to standing and walking with neurogenic claudication when walking over 100 yards.

According to the IRO reviewer, it is clear that this was a condition for which the Petitioner had received medical advice, diagnosis, care, or treatment within six months of her enrollment date of October 1, 2006. The IRO reviewer concluded that the certificate's criteria for a preexisting condition had been met in this case.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. The Petitioner's surgery was within 180 days of the beginning of her coverage with BCBSM. During her August 14, 2006, doctor's office visit the Petitioner received medical advice if not treatment for her back condition. This was within the six months leading up to the effective date of her coverage. Therefore, the Commissioner accepts the IRO reviewer's conclusion that the Petitioner's November 2006 back surgery was treatment of a preexisting condition. Based on this conclusion, the Commissioner finds that the Petitioner's November 14, 2006, surgery and related hospital care until November 18, 2006, are not a covered benefit under her certificate.

V
ORDER

Respondent BCBSM's August 24, 2007, final adverse determination is upheld. BCBSM is not required to provide coverage for the Petitioner's surgery and related hospital care provided from November 14, 2006, through November 18, 2006, under the terms and conditions of her coverage.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.